

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

Case No. 23-40709-CJP

Chapter 7

In re:

WESTBOROUGH SPE LLC

JOINT MOTION TO CONTINUE HEARING

NOW COME Movant Town of Westborough (“Town”) and the Chapter 7 Trustee (the “Trustee,” and together, the “Parties”) and hereby respectfully and jointly request that the Court further continue the hearing on the Town’s Motion for Relief from Automatic Stay and Opposition to Appointment of a Bankruptcy Trustee (Doc. No. 20, the “Motion for Relief”), currently scheduled for Thursday, December 21, 2023, at 12:30 p.m., for at least forty-five (45) days, until a date convenient for the Court no sooner than Monday, February 5, 2024.

In support of this Motion, the Parties state as follows:

1. The Town filed the Motion for Relief on October 3, 2023, seeking an order of the Court allowing the Town’s tax title foreclosure action pending in Massachusetts Land Court, Town of Westborough v. Westborough SPE, LLC, et al. (Mass. Land Ct. No. 19 TL 000768) (the “Tax Foreclosure Action”), concerning the property located at 231 Turnpike Road, Westborough, Massachusetts (the “Property”) to proceed, namely to allow the Land Court to adjudicate the motion to vacate judgment that the Debtor in this proceeding had purported to file in the Land Court in January 2023, which adjudication was halted by the filing of an involuntary Chapter 7 petition by the Debtor’s own counsel in the Tax Foreclosure Action (along with another party).

2. After the Trustee was appointed and the original hearing date on the Motion for Relief was continued until November 30, 2023, the Trustee filed an objection to the Motion for

Relief in which the Trustee raised the prospect of a bankruptcy sale of the Property (even though the Town currently holds title to the Property) and the possibility of removing the Tax Foreclosure Action to the Bankruptcy Court. No other party has objected to the Motion for Relief.

3. Additionally, around the time of the November 30, 2023 hearing, the Trustee advanced an informal oral proposal to settle certain issues and outstanding litigation concerning the Property in the context of this bankruptcy proceeding.

4. During the November 30, 2023 hearing, the Court continued the hearing for three weeks until December 21, 2023 in order to allow the Trustee to further explore the possibility of settlement and the question of removal of the Tax Foreclosure Action (despite the Town's objections to such removal), as well as to consider whether to commence an adversary proceeding under 11 U.S.C. § 548(a) to seek to avoid the tax title foreclosure judgment that entered in the Tax Foreclosure Action on January 5, 2022.

5. On December 5, 2023, the Trustee sent the Town's undersigned counsel a written settlement proposal. The Town's undersigned counsel has provided the proposal to the Town Manager, who in turn provided it to the Town's Select Board, the entity which controls the Town's legal strategy and ultimately must approve any settlement. Although the Town's undersigned counsel has met with the Select Board once in executive session pursuant to G.L. c. 30A, § 21(a)(3), to discuss the settlement proposal, the Select Board requires additional time to consider the proposal and how/whether it would like to proceed. In light of the limitations under the Open Meeting Law (G.L. c. 30A, §§ 18-25), the Select Board may only deliberate on this issue at duly-posted meetings, even when convening in executive session, such that the process requires more time than it would for a private party.

6. In light of the need for such additional time to further explore the possibility of settlement, as well as the scheduling concerns presented by the upcoming winter holidays (Christmas Eve and Day–December 24-25, 2023; and New Year’s Eve and Day–December 31, 2023 and January 1, 2024), the Parties respectfully request a further continuance of the hearing on the Motion for Relief for a period of at least forty-five (45) days from the current scheduled date of December 21, 2023.

7. Additionally, the Parties stipulate that the time for the Trustee to remove the Tax Foreclosure Action shall be similarly extended, such that the allowance of this Motion does not prejudice the Trustee’s rights of removal (whatever they may be); provided however that neither by this stipulation or otherwise does the Town consent to removal of the Tax Foreclosure Action or waive any objections to removal that are not based on timing.

WHEREFORE, the Town and the Trustee respectfully request that the Court allow this Motion and further continue the hearing presently scheduled for Thursday, December 21, 2023 at 12:30 p.m. until Monday, February 5, 2024, or until such other time and date thereafter as is convenient for the Court.

Respectfully submitted,

TOWN OF WESTBOROUGH,

By its attorneys,

/s/ Roger L. Smerage

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IN BANKRUPTCY FOR WESTBOROUGH
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/s/ Jonathan R. Goldsmith (with permission)

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Dated: December 15, 2023

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CERTIFICATE OF SERVICE

I, Roger L. Smerage, hereby certify that on the below date, I caused a copy of the foregoing Joint Motion to Continue Hearing to be served through the Court's CM/ECF system to the following counsel of record or by U.S. mail to the following unregistered parties:

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Dated: December 15, 2023



Roger L. Smerage